

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, MAY 21, 2003**

**C-1    CALL TO ORDER / ROLL CALL**

The City Council Closed Session meeting of May 21, 2003, was called to order by Mayor Pro Tempore Howard at 6:18 p.m.

Present: Council Members – Beckman, Hansen, Howard, and Land

Absent: Council Members – Mayor Hitchcock

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

**C-2    ANNOUNCEMENT OF CLOSED SESSION**

- a) Actual litigation: Government Code §54956.9(a); one case; *Albert v. City of Lodi et al.*, U.S. District Court, Eastern District, Case No. CIV S-00-2752 LKK PAN

**C-3    ADJOURN TO CLOSED SESSION**

At 6:18 p.m., Mayor Pro Tempore Howard adjourned the meeting to a Closed Session to discuss the above matter.

The Closed Session adjourned at 6:43 p.m.

**C-4    RETURN TO OPEN SESSION / DISCLOSURE OF ACTION**

At 7:01 p.m., Mayor Pro Tempore Howard reconvened the City Council meeting, and City Attorney Hays disclosed the following action.

In regard to Item C-2 (a), Council provided direction on how to proceed.

**A.    CALL TO ORDER / ROLL CALL**

The Regular City Council meeting of May 21, 2003, was called to order by Mayor Pro Tempore Howard at 7:01 p.m.

Present: Council Members – Beckman, Hansen, Howard, and Land

Absent: Council Members – Mayor Hitchcock

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

**B.    INVOCATION**

The invocation was given by Pastor Jimmy McClelland, New Hope Free Will Baptist Church.

**C.    PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Mayor Pro Tempore Howard.

**D.    AWARDS / PROCLAMATIONS / PRESENTATIONS**

- D-1 (a) Fire Chief Pretz presented the 2002 "Firefighter of the Year" award to Fire Captain Ron Penix.

Mayor Pro Tempore Howard presented a proclamation to Fire Captain Ron Penix announcing Saturday, May 31, 2003, as the date of the "Firefighter Muscular Dystrophy Association Fundraiser" (Fill the Boot campaign) in the City of Lodi.

- D-2 Proclamations – None

- D-3 (a) Ricky Gill, member of the Greater Lodi Area Youth Commission, acknowledged the Teen of the Month, Tran Nguyen from Tokay High School. Tran Nguyen was unable to attend the meeting due to another commitment.

- D-3 (b) Cynthia Haynes, Community Promotions Coordinator, announced the Lodi Chamber of Commerce Small Business Committee's 2<sup>nd</sup> Annual "Small Business Showcase 2003."
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E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Land, Beckman second, approved the following items hereinafter set forth **except those otherwise noted** by the vote shown below:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hitchcock

- E-1 Claims were approved in the amount of \$3,226,737.86.
- E-2 The minutes of April 16, 2003 (Regular Meeting), April 29, 2003 (Shirtsleeve Session), April 30, 2003 (Special Meeting), May 6, 2003 (Shirtsleeve Session), and May 6, 2003 (Special Meeting) were approved as written.
- E-3 "Accept the quarterly investment account report as required by law SB564" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**
- E-4 Approved the plans and specifications for the Lodi Avenue Overlay Project (Ham Lane to UPRR) and authorized advertisement for bids.
- E-5 Approved the specifications for 2003 Handicap Ramp Retrofit Project and authorized advertisement for bids.
- E-6 Approved the specifications for 24,000 feet of #1/0 underground triplex and 28,000 feet of #350 kcmil 600-volt underground triplex and authorized advertisement for bids.
- E-7 Approved the specifications for a supply contract for various items of overhead and underground distribution hardware for fiscal year 2003-05 and authorized advertisement for bids.
- E-8 Approved the specifications for fiscal year 2003-04 estimated requirements for post-top globe-style luminaires and Lodi Replica concrete streetlight standards.
- E-9 Authorized the Electric Utility Department and Finance Department's Purchasing Division to advertise for bids as necessary to meet the Electric Utility Department's requirements for polemount and padmount transformers through the fiscal year ending June 30, 2005.
- E-10 Adopted Resolution No. 2003-85 awarding the bid for the purchase of twenty 3-phase sectionalizing module enclosures to the low bidder, Wesco Distribution, of San Francisco, in the amount of \$11,390.90.
- E-11 Adopted Resolution No. 2003-86 authorizing the purchase of nine 15kV liquid insulated vacuum switchgears, as a sole source purchase, from Trayer Engineering Corporation, of San Francisco, in the amount of \$201,235.24.
- E-12 Adopted Resolution No. 2003-87 awarding the contract for the White Slough Water Pollution Control Facility Aeration Blower Replacement to Hibon, Inc., of Quebec, Canada, in the amount of \$222,000 and authorizing use of Public Benefit Funds in the amount of \$20,000; and appropriated funds in accordance with staff recommendation.  
Mayor Pro Tempore Howard noted that Council received a blue sheet on Item E-12 (filed).
- E-13 Received report on Contract Change Orders for the Police Department Facility, 215 West Elm Street.
- E-14 Adopted Resolution No. 2003-88 authorizing destruction of City Attorney records listed below in excess of two years of age:
  - Closed litigation files in excess of two or more years
  - Miscellaneous memoranda and correspondence for years 1995-2001
  - Miscellaneous claim files for years 1995-2001

- E-15 Approved placement of memorial plaque at Vinewood Park for Christine R. Scott.
- E-16 Authorized request for proposals for remittance processing system that would streamline the handling of bill payments to the City.

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ACTION ON ITEM REMOVED FROM CONSENT CALENDAR

- E-3 "Accept the quarterly investment account report as required by law SB564"

NOTE: Due to a potential conflict of interest stemming from his employment with Farmers and Merchants Bank, Council Member Land abstained from discussion and voting on this matter.

MOTION / VOTE:

The City Council, on motion of Council Member Beckman, Hansen second, accepted the quarterly investment account report as required by law SB564. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, and Howard  
Noes: Council Members – None  
Absent: Council Members – Mayor Hitchcock  
Abstain: Council Members – Land

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Steve Jarrett introduced himself as the pastor of New Hope Community Church and read the following statement signed by senior pastors from Century Assembly Church, Bear Creek Community Church, Harvest Bible Church, Temple Baptist Church, New Hope Community Church, Lodi Avenue Baptist Church, First Baptist Church, and the director of Christian Community Concerns (filed):

*To the members of the Lodi City Council and senior staff. I stand before you this evening with a proclamation for encouraging and informing the Council and staff that together we can stand, fight, and win the current attack upon the values of our great community. In 2000 the then current City Council saw the wisdom and benefit to our community of passing City ordinance 1696 part 6, which protected the values of our community. This ordinance came into existence by the leadership shown by Ken Owen of Christian Community Concerns and the strong urging and support of many of Lodi's Christian leaders and the congregations they serve. It has taken three years for the ordinance to start to have the desired impact of the regulating of the owners and employees of establishments that commerce in adult sexually-oriented businesses. Because this ordinance is being effective in this regulation, a current owner has filed a lawsuit against the City of Lodi in federal court claiming first amendment rights violations. It has distressed Christian Community Concerns as well as the Christian Leadership in this city that quotes attributed to the City Attorney belies an attitude of immediate defeat and retreat from the values we as a city wish to maintain. To refresh your memory the ordinance that was passed by the City Council was fashioned after a very similar ordinance that has been in place for the City of Modesto for many years. It was represented to us that their ordinance had survived court challenges. When news of the filing of the lawsuit against the city reached Ken Owen he asked the Pacific Justice Institute to look at Lodi's ordinance. They verbally told Mr. Owen that the ordinance, in its original form, was totally defensible. They will soon be forwarding a written legal opinion. We strongly, and we emphasize the term strongly, urge the Council to stay the course and fight the battle to maintain the values the citizens of Lodi hold dear. If ever there was a legal battle to take head on, using all the resources available to the city and with a City Attorney's office eager for the fight and confident of victory, this is that battle. We want to assure you that the Christian leadership represented by their signatures below, are not afraid of the federal court and are ready to do all they can within their scope, their influence, and their resources, to ensure that every action possible is taken, by you the Council and City Attorney's Office in the defense of this ordinance. Thank you for your time and we thank you for your effort that will come in this area that is so important to our community's way of life.*

Council Member Land stated that he believed in the ordinance, the need to defend it, and looked forward to the written legal opinion.

Pastor Jarrett stated that they had resources for legal assistance available to the City at no cost.

- Eileen St. Yves stated that she read an article in The Record today regarding Code Enforcement officers who made an inspection of property that turned out to be unnecessary. She stated that a petty disagreement between two neighbors allowed this to happen. It put a strain on the party who was investigated. The complainant was guaranteed anonymity. She asked what is done about individuals who make false claims, take up City time and money, and put others in a negative position without justification.

Council Member Beckman replied that Code Enforcement has the right to conduct searches and citizens have a right to refuse. The particular citizen referred to in the article allowed the Code Enforcement Officers onto his property to conduct the search.

Ms. St. Yves noted that if a citizen refuses the request, Code Enforcement may obtain a search warrant.

Council Member Hansen commented that from the Police Department's perspective if someone makes a false claim and it causes time and expense, there is a process that can be used to try and recover the costs. He noted that it is a criminal violation to report a crime that has not occurred.

- Arthur Price stated that his home is in an area being developed, to the west on Mills Avenue is Century Meadows and on the south is Mainstreet. He reported that the sewers in the area are 24 inches wide and 11 inches high with a 30 degree slant down to a 14 inch diameter pipe. He believed it to be an attractive nuisance and danger to neighborhood children. He noted that older sewer drains have a metal bar across them approximately five inches from the ground and suggested that the newer models be retrofitted accordingly.

City Manager Flynn indicated that he would look into the matter.

#### G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Pro Tempore Howard called for the public hearing to consider the Planning Commission's recommendation of approval of the request of Gary E. Hansen, Don and Nancy Miller, and J. Jeffrey Kirst for an Annexation, General Plan Amendment, and Prezoning at 13669 North Cherokee Lane; 1443, 4071, 4145, and 4219 East Harney Lane; the request also includes a recommendation to certify Negative Declaration ND-02-11 as adequate environmental documentation for this project.

Community Development Director Bartlam reported that there are three property owners that have requested to change the City's general plan and zoning in preparation of annexation of two properties. He noted that a third property has already been annexed. The first property is just over 18 acres and is located on the northwest corner of Harney Lane and the Cherokee Lane frontage to Highway 99. The second property, owned by Jeffery Kirst, is much smaller and is located on west Harney Lane. Mr. Bartlam explained that the first step in the annexation process is to amend the general plan from the City's planned residential designation and provide for direction for a zoning designation, which in this case it is suggested to go from planned residential to medium-density residential. Medium-density residential is a designation that allows 7 to 20 units per acre. The second property on west Harney Lane would go from planned residential to low-residential density, which is the designation for the surrounding properties. This site currently has a single-family residence on it and has some potential to subdivide the back property to gain additional single-family lots. Mr. Bartlam asked that Council amend the general plan and provide zoning for the three properties and initiate annexation for the two parcels that are southeast of the existing City limits.

In reply to Council Member Hansen, Mr. Bartlam explained that medium-density residential provides for a broad variety of housing type's potential, including apartments. In this case there is some ability to transition from the single-family residential that exists off of Richards Ranch.

Hearing Opened to the Public

- Jeffery Kirst stated that he had purchased the property after finding out that the previous owner had not lived in the property for six years nor had received any notices about the previous annexations. Mr. Kirst stated that he was the developer of the property surrounding the rest of the southeast Lodi project that is also under consideration tonight. He believed it to be a good transition for the surrounding area and recommended approval.
- Steve Pechin stated that he represents Gary Hansen who has an interest in the property at the corner of Harney Lane and Cherokee Lane frontage road and recommended Council approval of the requests being made. He noted that he plans to submit a development plan prior to the May 31 deadline for the growth management allocations. He stated that it is a medium-density project that has a buffer at the transition area of Tradewind Drive into this project.

Public Portion of Hearing Closed

MOTION #1 / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, adopted Resolution No. 2003-89 entitled, "A Resolution of the Lodi City Council Amending the Land Use Element of the Lodi General Plan by Redesignating the 19.44 Acres Located at 13669 North Cherokee Lane; 4071, 4145, and 4219 East Harney Lane; and 1443 East Harney Lane (APN 062-290-14, 17, 37, and 38 and APN 058-230-17) from PR, Planned Residential to MDR, Medium Density Residential and LDR, Low Density Residential."

The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hitchcock

MOTION #2 / VOTE:

The City Council, on motion of Council Member Beckman, Land second, introduced Ordinance No. 1731 entitled, "An Ordinance of the Lodi City Council Amending the Official District Map of the City of Lodi and Thereby Rezoning the Parcels Located at 13669 North Cherokee Lane; 4071, 4145, and 4219 East Harney Lane; and 1443 East Harney Lane (APN 062-290-14, 17, 37, and 38 and APN 058-230-17) from San Joaquin County RL, Residential Low Density and AU-20 Agriculture Urban Reserve to R-2, Single Family Residential." The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hitchcock

- G-2 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Pro Tempore Howard called for the public hearing to consider the appeal of Juan Diaz of a Planning Commission approval of a Use Permit to establish a Type #20 Off-Sale Beer and Wine liquor license at 725 S. Cherokee Lane with the condition that the applicant transfer an existing license from within Lodi to the proposed location.

Community Development Director Bartlam explained that Juan Diaz is appealing a condition the Planning Commission placed on the approval of his request for a Use Permit to establish an off-sale beer and wine liquor license at his market, La Capilla, on the corner of Harold and Cherokee Lane. The condition placed on the approval was that Mr. Diaz acquire an existing license from Lodi.

Mr. Bartlam reported that the state provides guidelines to local jurisdictions for purposes of determining concentration, i.e. how many licenses may or may not be needed for a given population. It is done on a census tract basis of 2,500 per license. The state suggests that Lodi should have 24 licenses; however, it currently has 54. There are two licenses owned by the AM PM markets that were recently closed, but they have not been surrendered and they are not interested in selling them. Consequently, Mr. Diaz is in the position of not being able to find a license within the City. Staff now suggests as an alternative that the City maintain a cap of 54 on the licenses, allow Mr. Diaz to acquire a license from elsewhere in the county, and deduct one of the AM PM licenses from the total number.

Mr. Bartlam stated that there are three other prospective applicants: 1) a large supermarket, which will be under construction this summer where the Tokay Bowl used to be; 2) the Econo gas station at Beckman and Victor Roads; and 3) a new gas station being proposed at the corner of Harney Lane and Stockton Street.

Council Member Beckman expressed support for granting Mr. Diaz' appeal; however, he was hesitant about setting a cap on the number of licenses as he believed that business owners should be given the freedom and latitude to be successful.

Council Member Hansen noted that Lodi's DUI (driving under the influence) statistics are high. The number of licenses has a direct correlation to the ability of people to get alcohol, consume it, and be out in public. He was in favor of granting Mr. Diaz' appeal because of the two licenses that give the flexibility of doing so, and was also in favor of limiting the number of off-sale beer and wine licenses that can be purchased in Lodi.

City Manager Flynn pointed out that there is an issue of property rights for two parties: 1) the business owner and his ability to compete; and 2) residential neighbors on the east side. He recalled that a few years ago a concern was expressed about an over concentration of liquor licenses on the east side and the negative effect it had on the community.

Council Member Beckman stated that he would be open to looking at more evenly dispersing the licenses.

#### Hearing Opened to the Public

- Juan Diaz stated that he was told by an individual in the Community Development Department (who has since retired) that he would be able to sell beer and wine from his business because it had formerly been a bar. Mr. Diaz worked for a year remodeling the building, after which time he attempted to get a beer and wine license. Aldee Market was willing to sell him its license for \$3,000. He then met with Community Development Director Bartlam and Mike Smith regarding the matter, and Mr. Bartlam stated that he would not allow Mr. Diaz to have a beer and wine license because there were already too many in the area. Mr. Diaz noted that Starr Market was open at this time, and he alleged that it was selling alcohol to minors. Mr. Diaz continued to work on repairs to the building for a time, at the conclusion of which Starr Market closed and its liquor license became available. Mr. Diaz approached Mr. Bartlam again with a request to purchase a license and was again denied on the same grounds as previously noted. Mr. Diaz felt that he was misled by the Community Development Department and implied that Mr. Bartlam was treating him unfairly because he had allowed other businesses on Cherokee Lane to get licenses. Mr. Diaz stated that he pursued the matter after hearing that Food for Less would be opening near his market, and he was told that because it was a larger business it would be allowed to get a liquor license. He complained that every time he has gone to the City for advice, each person he speaks to gives him a different answer.

Council Member Land expressed support for Mr. Diaz' request, noting that he understood how there could have been a misunderstanding.

In answer to Council Member Land, Mr. Bartlam explained that the state's guideline is that there should not be in excess of one license per 2,500 people. He suggested that if Council set a cap at 54 now, each time Lodi's population grew by 2,500 one more license would be added to the cap.

Mr. Diaz reported that he was told by the Department of Alcoholic Beverage Control today that based upon his census tract they would not allow him to purchase a new license; however, he could transfer one within San Joaquin County to Lodi.

Mr. Bartlam stated that the census tract where his business is located should have no more than seven licenses, and it currently has 12.

In reply to Council Member Land, City Attorney Hays advised Council that it has two actions to take regarding this matter: 1) decide on the appeal of Mr. Diaz; and 2) consider whether or not to establish an off-sale beer and wine liquor license cap for the City.

Public Portion of Hearing Closed

MOTION #1 / VOTE:

The City Council, on motion of Council Member Beckman, Land second, affirmed the Planning Commission's approval of a Use Permit to establish a Type #20 Off-Sale Beer and Wine liquor license at 725 S. Cherokee Lane **without** the condition that the applicant transfer an existing license from within Lodi to the proposed location. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hitchcock

Council Member Beckman was opposed to establishing a cap and preferred that each request for a license be considered on a case by case basis as is currently done.

In reply to Council Member Hansen, Mr. Bartlam stated that without any further direction from Council he would recommend against any off-sale licenses and let applicants make their appeals through the Planning Commission and Council. He would make this recommendation based on what he believes is an over concentration of licenses. Mr. Bartlam noted that what would likely occur under this situation is that the value of the current licenses would increase and the ability for someone to obtain a license would be based upon how much they were willing to pay. He commented that the market sets the price for the commodity.

Mayor Pro Tempore Howard favored setting a cap at 54, noting that transfers and exchanging of licenses would continue to happen and the cap would foster competition.

Council Member Hansen stated that he supported allowing people to develop their properties. As a compromise he offered "grandfathering in" the three businesses that Mr. Bartlam noted earlier were interested in obtaining licenses, and then set the cap at 57.

MOTION #2:

Council Member Hansen made a motion to establish a cap of off-sale beer and wine liquor licenses in the City of Lodi at 57. The motion **died** for lack of a second.

MOTION #3:

Council Member Land made a motion, Howard second, to set the cap of off-sale beer and wine liquor licenses in the City of Lodi at 54 and increase the number by one each time the population increases by 2,500.

DISCUSSION:

Council Member Hansen warned that if another business obtains the one remaining off-sale liquor license in the City before the San Miguel market on Cherokee Lane has an opportunity to apply, it will eliminate its ability to sell liquor from the store.

Mayor Pro Tempore Howard acknowledged Mr. Hansen's concern; however, she believed that there were an adequate number of facilities in the area that could offer the sale of liquor to customers.

VOTE:

The above motion **failed** by the following tie vote:

Ayes: Council Members – Howard and Land

Noes: Council Members – Beckman and Hansen

Absent: Council Members – Mayor Hitchcock

Mayor Pro Tempore Howard suggested that the topic of establishing a cap on the off-sale beer and wine liquor licenses in the City of Lodi be tabled for further discussion when five Council Members are present.

Mr. Bartlam recommended that the topic be discussed at a Shirtsleeve Session.

Council Member Hansen agreed, noting that it would allow more opportunity for input from the community.

H. COMMUNICATIONS

H-1 Claims filed against the City of Lodi – None

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 The following postings/appointments were made:

a) The City Council, on motion of Council Member Land, Beckman second, directed the City Clerk to post for the following vacancies by the vote shown below:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hitchcock

Lodi Arts Commission

Edie Van Noy Term to expire July 1, 2004

Jennifer Walth Term to expire July 1, 2005

H-4 Miscellaneous

a) City Clerk Blackston presented the cumulative Monthly Protocol Account Report through April 30, 2003.

RECESS

At 8:42 p.m., Mayor Pro Tempore Howard called for a recess, and the City Council meeting reconvened at 8:53 p.m.



I. REGULAR CALENDAR

I-1 "State Budget update"

City Manager Flynn presented the following information from the Governor's Budget May Revision (filed):

2002-03

- The proposal to eliminate the Vehicle License Fee (VLF) backfill was deleted from the Governor's budget for the current fiscal year;
- Reduce grants to the Public Library Foundation of \$15.8 million;
- Transfer of Redevelopment Agency housing funds of \$500 million;
- Reduction of state highway account funding for streets and roads of \$9 million;
- The legislature has already adopted reverting flood control subventions;

2003-04

- Reinstate the VLF backfill effective July 1, which is worth \$2.9 million to cities;
- Deleted the Williamson Act, which would have cost local government \$39 million;
- Eliminate the booking fee, which will cost cities \$40 million;
- Defer payments for mandates, which was worth \$770 million in the original proposal;
- Transferring redevelopment property tax to schools of \$250 million;
- Continue to recommend undesignated fees from counties to courts, which is a reduction of \$31 million;
- Reduce correction law enforcement payments of \$62 million;
- Reduce grants to libraries \$14.8 million;
- Reduction to Public Library Foundation of \$12.1 million;
- Suspend transfer of sales tax on gas to transportation infrastructure funds, which is a reduction to local government of \$1 billion;
- Cancel the general fund loan repayments to transportation congestion relief fund of \$500 million;
- Realign health and social services, which will cost local governments \$6 billion;

Mr. Flynn reported that the League of California Cities has expressed a position of support to providing local revenues if there is an amendment to the State Constitution, i.e. that the State would not be able to touch local property tax, sales tax, VLF, and all locally approved tax revenues unless the Governor declares a fiscal state of emergency and the legislature approves such action by at least a two-thirds vote. Mr. Flynn stated that the measure authorizing the seizure of local tax funds provides for its full reimbursement in the next fiscal year.

Council Member Hansen noted that the City does not pay booking fees because it has a type one jail facility, so that particular impact would not affect Lodi. He noted that because of the way the City has operated and its financial management, it appears that the upcoming budget impact may not be as devastating as some had feared.

Mr. Flynn agreed; however, he explained that the primary reason for that is because of the State's proposal next year to borrow \$10.2 billion in order to "bridge the gap."

Council Member Beckman distributed a copy of Schedule 6 entitled Summary of State Population, Employees, and Expenditures (filed). He reported that he has compared the State's and Lodi's budgets over the past ten years and noted that Lodi's budget reflects a similar trend. Over the last ten years the State has grown on average 1.3% in population per year, and Lodi has grown 1.3%. State expenditures have risen at a rate of 8.3% every year for the past ten years, while Lodi's has increased 5.8%. Page D-5 of Lodi's 2003-05 budget shows that expenditures will grow by 10.4% in the 1<sup>st</sup> year and 6.3% in the 2<sup>nd</sup> year. The Fire Department's budget will increase at a rate of 21% in the 1<sup>st</sup> year

and 17% in the 2<sup>nd</sup> year. Mr. Beckman questioned the need for purchasing another fire engine, in light of the Fire Chief's recent comments that having uniformed on-duty firefighters in attendance during Council meetings would not jeopardize the coverage to the City. Page B-11 of the budget indicates that the City should maintain at least 15% of operating expenditures in the general fund, which is considered the minimum level necessary to maintain the City's credit worthiness, adequately provide for economic uncertainties, contingencies for unforeseen operation or capital needs, and cash flow requirements. However, according to the proposed budget the City's reserves will be 14.5% in the 1<sup>st</sup> year and 12.5% in the 2<sup>nd</sup> year. Page B-16 stipulates that all requests for additional regular positions (e.g. firefighters and paramedics) will include an evaluation of the necessity and ability of private industry to provide the proposed services. Mr. Beckman stated that due to the Fire Chief's comments regarding coverage of the City, he could not see the necessity. Paramedics are already being provided to the City at no cost by private industry. Mr. Beckman stated that he was shocked by the Fire Department's proposal to charge a first responder fee to offset the paramedic cost, which in essence charges a private business entity in the community \$478,000 a year for the City to have the privilege of competing with them.

Council Member Hansen replied that he did not dispute the figures quoted by Mr. Beckman; however, he objected to how they were interpreted. He believed that the City has been fiscally conservative and in the long run would have a balanced budget and the necessary reserves to operate. He noted that before he and Mr. Beckman were elected the City Council adopted a plan in terms of service from the Fire Department. In reference to the first responder fee, he stated that the issue is whether or not the Fire Department responds first and begins work that the paramedics would have done if they had arrived first to the call. He stated that the first responder fee is an established practice in other communities. He noted that the proposed budget allows the City to continue to provide the level of service that the community has come to expect and still have a 14.5% reserve, which he believed to be very good.

MOTION/ VOTE:

There was no Council action necessary on this matter.

- I-2 "Authorization to write off uncollectible Business Improvement District assessments in the amount of \$6,469.15"

City Manager Flynn noted that a blue sheet has been distributed regarding this item (filed).

Kevin Bell, Finance Technician, provided the following summary of actions taken to date related to the downtown Lodi Business Improvement District (BID) assessments:

- 2000-02 assessments were billed by the Downtown Lodi Business Partnership (DLBP) and late charges were applied on the delinquent accounts;
- At the December 18, 2002 Council meeting the DLBP delinquent accounts were turned over to the City for collection;
- Between December 18 and January 10 there was e-mail correspondence between the Finance Director and the DLBP for clarification and correction of account information;
- January 10 – letters were sent to delinquent accounts according to the information submitted by the DLBP and there was some return mail a few days later;
- January 21 – updated the City Manager's Office with the status of the DLBP mailing and correspondence;
- In January and February there were some payments received on the past due accounts;
- May 9 – began reviewing and researching the delinquent assessments, and documented the uncollectible accounts;

- May 15 – submitted the staff report requesting authorization to write off uncollectible accounts and delivered a copy to the DLBP;
- May 20 – received an e-mail from the DLBP with additional information, followed up on that information, and deemed accounts uncollectible for the following reasons:
  - 8 – internal bad debt accounts
  - 2 – unable to identify proper ownership
  - 6 – invalid mailing or business address
  - 14 – lack of current utility services
  - 8 – no valid business tax service on file
  - 2 – bankruptcy or deceased

In reference to Exhibit A of the staff report, Mr. Bell reported that he completed additional analysis and found the following:

- Item 3 was uncollectible due to current bad debt, invalid address, lack of current utility services, and no valid business tax certificate;
- Item 6 – the location in question was a museum, not a business. Donations were received for admission and no retail sales were conducted. Per Lodi Municipal Code Section 3.01.040 under the definition of business, the activity of voluntary donation would not be considered a business transaction and therefore the location would be exempt from both business tax and BID assessment.
- Item 7 – the previous owner is currently disputing the amount of the assessment with the DLBP, and for this reason, Mr. Bell recommended that Council eliminate this item from the uncollectible BID assessments and amend the total amount to \$6,069.95.

In reference to the museum, Lew VanBuskirk explained that the criteria for billing the assessment is that they must be licensed. He noted that the City had not billed them for a license. He stated that if they were a non-profit agency as they claimed to be, then that would be a legitimate write-off.

Council Member Beckman questioned the write off of \$1,200, to which Mr. Bell explained that it involved a change of ownership that took place in 2002. The new owner took over ownership near the first of June, so they would be exempt from the assessment fees for that year. He explained that it is a debt of the owner, not the business.

City Attorney Hays recalled that when the district was formed the City made a conscious decision to make the assessments individual debts, rather than placing liens on the properties.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, directed the Finance Director to write off uncollectible BID Assessments in the amount of \$6,069.95. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hitchcock

- I-3 “Council direction regarding request for advance payment of uncollected/delinquent 2003 assessments to the Downtown Lodi Business Partnership (\$5,000)”

Janet Hamilton, Management Analyst II, reported that on May 12 the City received a letter from the Downtown Lodi Business Partnership (DLBP) requesting a \$5,000 advance on the uncollected delinquent assessments for 2003. The Finance Department to date has billed \$34,300 to the businesses and collected and turned over to the DLBP \$25,600. This leaves a balance of \$8,700 in uncollected fees. According to the ordinance the City will bill and collect the assessment fees at no charge to the area and forward all collected funds to the area within 30 days of such collections. Staff is requesting direction from Council, because granting the DLBP the uncollected assessments would be an exception to the ordinance.

*Continued May 21, 2003*

Low VanBuskirk explained that the DLBP is making the request because of the slow collection process and cash flow difficulties that the DLBP is currently experiencing.

Council Member Beckman noted that the City provides billing and collection of the assessments without charge to the DLBP, and in addition to that, the DLBP is now asking the City to front money that at some point it may have to write off as uncollectible. Mr. VanBuskirk acknowledged this possibility.

In answer to Council Member Hansen, Finance Director McAthie reported that staff has just begun analyzing the current assessments that are delinquent and could not comment on whether the accounts would be 100% recoverable. She stated that business licenses are issued January 1, but the assessments are not delinquent until April.

Council Members Hansen and Land suggested that an amendment to the ordinance be considered, which would make the business licenses and BID assessments due at the same time.

Council Member Land was not in favor of advancing payment to the DLBP.

Mr. VanBuskirk recalled that the DLBP typically billed \$34,000 to \$35,000 and collected \$30,000 to \$31,000. The remaining balance had been delinquencies and penalties since the year 2000. He reported that it is against state law to tie the assessment to business licenses. He explained that there are two types of BIDs: 1) business based, and 2) property based. With property based assessments liens can be placed on the property, which is advantageous to the collection process. To change from the current business based BID it would require dissolving the district and creating a property based district through a vote of the property owners. Mr. VanBuskirk stated that this is the first year that the DLBP has been in as tight a budget situation since he became the Executive Director in 1999. He explained that past events have caused the budget shortfall.

City Manager Flynn commented that a lot of communities bill the business license tax and the BID assessments at the same time.

Mayor Pro Tempore Howard was opposed to advancing the money, noting that it would be an advance of money that the City may not be able to collect and giving it to the DLBP risk free.

Mr. Flynn suggested that Council consider a compromise of advancing the \$5,000 from next year's contribution to the DLBP of \$47,000, leaving a balance due them of \$42,000.

Council Member Land replied that he would be willing to entertain the idea at the time the 2003-05 budget is being considered.

Mayor Pro Tempore Howard was not in favor of Mr. Flynn's suggestion.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, denied the request for advance payment of uncollected/delinquent 2003 assessments to the Downtown Lodi Business Partnership in the amount of \$5,000. The motion carried by the following vote:

Ayes: Council Members – Beckman, Howard, and Land

Noes: Council Members – Hansen

Absent: Council Members – Mayor Hitchcock

NOTE: The remaining Regular Calendar items were heard and discussed out of order.

- I-5 "Adopt resolution approving the Grape Bowl rental agreement with the Lodi Chamber of Commerce"

City Manager Flynn noted that a blue sheet has been distributed to Council regarding this item (filed).

Parks and Recreation Director Baltz reported that a request from the Chamber of Commerce had been received to rent the Grape Bowl facility for a music concert on August 21. He noted that a concert had not been held at the Grape Bowl for well over ten years. The Chamber hopes to attract 8,000 people to the event. The agreement states that City services will be paid by the lessee and concessions will be shared between the Chamber and various non-profit organizations. The security, restrooms, and crowd control issues are to be handled by the lessee. The rental fees and percentage issues are to be negotiated.

Pat Patrick, Executive Director of the Chamber of Commerce, distributed a summary sheet related to the Grape Bowl rental agreement fees (filed). He noted that the contract asked for a rental fee of \$5,000, 3% gross of the gate, and a \$2,000 maintenance deposit. In total the City fees amount to \$15,053, which expressed as a percent of the Chamber's projected net on the concert is 38%. Mr. Patrick believed this to be excessive. He asked Council to consider the following amendment to the agreement: \$5,000 rental, \$3,160 Police, \$393 Fire, and \$300 maintenance deposit. He recommended that Council reconsider its Grape Bowl schedule and fees, noting that the current prices are too high for the venue. He pointed out that there are not adequate restrooms or concessions at the facility. There is no power generation, garbage containers, or maintenance staff that comes with the proposed \$5,000 rental fee. The Chamber will have to build a stage, as well as pay up to \$2,000 to put the venue on ticketmaster.com. Mr. Patrick believed that the rental fee, without a percentage of the gate, would be an adequate charge for use of the Grape Bowl facility.

Discussion ensued regarding the proposed amendments to the rental agreement.

Council Members Land and Hansen agreed that the Parks and Recreation Commission should review the Grape Bowl fee schedule.

MOTION:

Council Member Hansen made a motion, Land second, to adopt Resolution No. 2003-90 approving the Grape Bowl rental agreement with the Lodi Chamber of Commerce to include the following fees.

Rental Fee	\$5,000
Police	\$3,160
Fire	\$ 393
Maintenance Deposit	<u>\$1,000</u>
	\$9,553

DISCUSSION:

Mayor Pro Tempore Howard noted that in the future she would prefer that Council establish a percentage and be confident in the fact that the City should receive some funds from the events that are held at the facility.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hitchcock

I-7 "Adopt resolution approving the Voluntary Time Off Program for fiscal year 2003-04"

Human Resources Director Narloch reported that the Voluntary Time Off (VTO) program is a collaborate effort to introduce a leave without pay program in the City as a method of reducing City costs during a budget crisis time. The main objective with the program is to assist the City in offsetting future layoffs and other types of reductions. She commented that it should not be construed as a lack of work on the part of the positions that participate. If there were no savings as a result of any of the requests to take time off, the leave would be denied.

City Manager Flynn estimated that the savings from the VTO program could range from \$50,000 to \$1 million. The program allows employees to buy leave. An employee who bought 12 days of leave in a year would save the City 5% of his/her compensation cost. An incentive has been included in the program, wherein employees who take six days VTO will be given one additional day and those who take 12 days VTO will be given 14. The program has been called "Grandi" leave as a way to recognize it and separately identify it in the payroll system. He stated that VTO cannot be cashed out and it will stay on the books as long as the individual is an employee with the City, or until they use it.

Mayor Pro Tempore Howard clarified that employees have through the month of June to establish how many days of VTO they would like to take. If the program is successful, Ms. Howard stated that she would like to leave it open at the end of the year for further implementation.

MOTION:

Council Member Hansen made a motion, Beckman second, to adopt Resolution No. 2003-91 approving the Voluntary Time Off Program for fiscal year 2003-04; to review the program, and if successful, continue for fiscal year 2004-05.

DISCUSSION:

City Manager Flynn noted that as a contingency in the future, if the City were to have larger cuts in revenue than anticipated or extraordinary costs arise, he may return to Council with a recommendation for mandatory leave without pay. He stated that mandatory leave of one day a month would save the general fund \$1.1 million. He pointed out that anyone signing up for the VTO program will be offered the incentive days; however, if a mandatory program were instituted the incentive would be eliminated.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hitchcock

I-8 "Adopt resolution authorizing the City Manager to execute the contract for Transit Operations Services for Dial-A-Ride and Fixed Route (approximately \$1,700,000)"

City Manager Flynn noted that a blue sheet has been distributed to Council regarding this item (filed).

Public Works Director Prima reported that three bids were received for transit operations services. Tiffani Fink, Transportation Manager, held a review panel with outside entities to assist the City in evaluating the bids. Staff recommends that Council award the bid for transit operation services for Dial-A-Ride and Grapeline to MV Transportation of Fairfield.

Ms. Fink recalled that she came to Council in February with the Request for Proposal (RFP) for this service. At that time comments were made by Council Members of additional things that they wanted considered, which were added to the RFP. Ms. Fink reviewed the following key items that were included in the MV Transportation proposal:

- Recording of receptionist to monitor customer service. The tapes will be held for six months and on demand of the City will be turned over to Ms. Fink for review;
- Door hanger policy – If MV shows up for transport and no one is home, a note will be left to let the resident know that they were there;
- Missed trip policy – A letter of apology would be sent to the rider and a free trip offered;
- Employee incentive program – A \$200 cash incentive is offered to employees who go a year without receiving any complaints;
- MV will retain as many current employees as possible and will match their salary and benefits.

Council Member Hansen noted that recording dispatcher's phone conversations also serves to protect them if someone makes a false accusation. He commented that MV Transportation has other vehicles available should a need arise temporarily, which he believed would be beneficial in ensuring that time delays are kept to a minimum.

Mayor Pro Tempore Howard reported that she spent over an hour at City Hall today reviewing all three proposals.

In reply to Mayor Pro Tempore Howard, Keith Whalen, Vice President of MV Transportation, stated that the bilingual abilities of the existing staff would be continued, as they intend to retain as many of the existing personnel as possible. In addition, if needed, MV has the ability to utilize the services of an entrepreneurial agency that provides translation for 50 different languages. MV conducts a quarterly survey of riders to assess their satisfaction level. The local manager will remain in contact with passengers and solicit first-hand comments. Comment cards are also located in the vehicles. Mr. Whalen reported that a manual dispatching system with computer assistance is used. The Route Match System is an enhancement available for an additional cost that would fully automate the dispatching system.

Mayor Pro Tempore Howard noted that she received a call from a citizen who cautioned that it is important to look for additional costs and not merely select the lowest bid. Mr. Whalen replied that MV Transportation stands behind the prices submitted.

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, adopted Resolution No. 2003-92 authorizing the City Manager to execute the contract for Transit Operations Services for Dial-A-Ride and Fixed Route with MV Transportations, of Fairfield, CA, in the amount of \$4,997,089. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hitchcock

- I-4 "Adopt resolution amending Traffic Resolution 97-148 approving the conversion from angle parking to parallel parking on the west side of Central Avenue from Flora Street south to the alley"

Public Works Director Prima reported that this request came from the residences in front of the half block being affected. There was one business that objected, so the conversion from angle parking to parallel was scaled back to just the north half of the block.

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, adopted Resolution No. 2003-93 amending Section 4 of Traffic Resolution 97-148 by approving the conversion from angle parking to parallel parking on the west side of Central Avenue from Flora Street south to the alley. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hitchcock

I-6 "Adopt resolution opposing AB1221 (Steinberg) regarding property and sales tax shifts"

City Manager Flynn explained that AB 1221 is a redistribution of sales tax and property tax. The City would give up half of its sales tax in exchange for an equal amount of property tax, which would create a new base for the City in the future. Over the next five years the impact to the City would be \$3 million. A number of cities throughout California have taken a strong opposition to the bill. Mr. Flynn believed that the bill encourages urban sprawl in the San Joaquin Valley because it promotes housing development without any consideration as to what is happening to the agricultural base.

Council Member Beckman did not believe it was appropriate for Council to expend resources by frequently supporting or opposing state bills and did not feel that this particular topic warranted such action.

Council Member Hansen disagreed and countered that potentially losing \$3 million justifies a resolution by Council in opposition. He pointed out that the League of California Cities has encouraged cities to send a united voice to its legislators in Sacramento.

Council Member Land concurred with Mr. Hansen.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Hansen second, adopted Resolution No. 2003-94 opposing Assembly Bill 1221 (Steinberg and Campbell) regarding property and sales tax shifts. The motion carried by the following vote:

Ayes: Council Members – Hansen, Howard, and Land

Noes: Council Members – Beckman

Absent: Council Members – Mayor Hitchcock

I-9 "Adopt resolution authorizing the City Manager to execute an agreement among the cities of Lathrop, Lodi, Manteca, Tracy, Ripon, and San Joaquin County providing for voluntary cost sharing for programs required in the National Pollutant Discharge Elimination System Phase II Permit"

Public Works Director Prima reported that small cities in the county, as well as the County itself now fall into the Storm Water Permit Program. The proposed agreement states that it is the intent of the participants to work together and split the cost on specific activities such as training, printing brochures, and creating a website.

MOTION / VOTE:

The City Council, on motion of Council Member Beckman, Hansen second, adopted Resolution No. 2003-95 authorizing the City Manager to execute the agreement among the cities of Lathrop, Lodi, Manteca, Tracy, Ripon, and San Joaquin County providing for voluntary cost sharing for programs required in the National Pollutant Discharge Elimination System Phase II Permit required by the Regional Water Quality Control Board. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hitchcock

J. ORDINANCES

None.

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Land announced that the Lodi Theater Group is auditioning age groups of 8 to 20 years for its Summer Musical Theater Experience production of Brigadoon on July 18, 19, and 20. On June 3 the Housing Authority is conducting a free workshop for landlords. It will explain the benefits of the new allocation of Housing Choice Vouchers for Section 8, which helps low- and moderate-income individuals pay for their rent. It includes guaranteed rent payments up to 60 days on vacant apartments. The Housing Authority will conduct inspections on properties, as well as prescreen tenants.



*Continued May 21, 2003*

- Mayor Pro Tempore Howard thanked Hans Hansen, Manager of Engineering and Operations at Electric Utility, for spending a half hour showing her around the storage area so that she could see first hand the supplies that were being requested on the Consent Calendar of tonight's agenda. She also thanked the Lodi Lake docents and Storm Drain Detectives who sponsored a program on May 12 at the Library regarding the Mokelumne River. An East Bay Utility District engineer gave a presentation on the Pen Mine cleanup. Ms. Howard recognized all those involved in the Public Works Department and noted that it is Public Works Week.

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn commented that Public Works provided an excellent program this afternoon for its employees.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:04 p.m.

ATTEST:

Susan J. Blackston  
City Clerk